Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services	)	WT Docket No. 96-162
	)	
Implementation of Section 601(d) of the Telecommunications Act of 1996, and Sections 222 and 251(c)(5) of the Communications Act of 1934	)	

OPPOSITION OF MCI TELECOMMUNICATIONS CORPORATION
TO ITTA's PETITION FOR RECONSIDERATION

MCI Telecommunications Corporation (MCI) submits this opposition to the Petition for Reconsideration of the Commission's Report and Order in the above-captioned proceeding[1] filed by the Independent Telephone and Telecommunications Alliance (ITTA). ITTA challenges the decision in the Report and Order (R&O) to impose a separate affiliate requirement on incumbent local exchange carrier (ILEC) in-region broadband commercial mobile radio services (CMRS), including ILECs with fewer than two percent of the nation's subscriber lines ("Two Percent LECs"). ITTA argues that the Two Percent LECs should be exempt from the separation requirements because there is nothing in the record to show that CMRS providers have been unable to compete against the Two Percent LECs in the provision of CMRS, and those requirements impose an unjustifiable burden on such small carriers.

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[1] FCC 97-352 (released Oct. 3, 1997).

Contrary to ITTA's claims, however, Two Percent LECs are capable of doing considerable harm by virtue of their remaining bottleneck power and are quite willing to do so. Given the rationale for the separation requirements, there is more than adequate justification in the record for applying those minimal requirements across the board. Moreover, the Commission gave more than sufficient recognition to the considerations raised by ITTA by establishing a waiver procedure for Two Percent LECs seeking relief from the separation requirements. ITTA's petition should therefore be rejected.

A. Background

In this proceeding, the Commission reviewed the requirement in Part 22 of its Rules that the Bell Operating Companies (BOCs) may only provide cellular services through structurally separate corporations, as well as possible transition mechanisms and alternative safeguards to replace its Part 22 rules with "uniform safeguards" applicable to all LEC CMRS.[2] The Commission also addressed the remand of its previous decision to maintain structural safeguards for BOC provision of cellular services but to permit BOCs to provide broadband personal communications services (PCS) under nonstructural safeguards.[3]

In its R&O, the Commission resolved these issues by reducing the degree of separation to which BOC cellular services were

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[2] Notice of Proposed Rulemaking at ¶ 5, FCC 96-319 (released Aug. 13, 1996).

[3] That issue was remanded by Cincinnati Bell Tel. Co. v. FCC, 69 F.3d 752 (6th Cir. 1995).

subject but extended the coverage of the reduced separation requirements to most ILEC in-region broadband CMRS, including PCS. Rather than continuing to require BOCs to provide cellular services under the requirements of Section 22.903 of the Commission's Rules -- including separate officers and personnel -- the Commission substituted the less stringent separation requirements originally established in the Competitive Carrier[4] proceeding and imposed those rules on all ILECs, other than rural carriers, providing in-region broadband CMRS.

Under those rules, ILECs must provide such services through a separate corporation that (1) maintains separate books of account, (2) does not jointly own transmission or switching facilities with its affiliated ILEC that the ILEC uses for the provision of local exchange service in the same in-region market and (3) acquires any and all services from the affiliated ILEC on a compensatory arm's length basis pursuant to the Commission's affiliate transaction rules. The R&O also provides that Two Percent LECs may petition the Commission for suspension or modification of the separate affilate requirement.

The Commission explained the extension of the separate affiliate requirements to cover all non-rural ILEC in-region broadband CMRS by reference to the ILECs' continuing bottleneck control over the local exchange network, giving them the ability

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[4] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Therefor, CC Docket No. 79-252, Fifth Report and Order (Fifth Report), 98 FCC 2d 1191 (1984).

and incentive to engage in anticompetitive behavior in the same manner as the BOCs.[5] The Commission referred to other recent regulatory proceedings in which it has found a continuing ability and incentive on the part of ILECs to discriminate against competitors in various markets, including CMRS.[6] The Commission found that such abilities and incentives justified the imposition of new separation requirements on the non-BOC ILECs and that such burdens would be minimized by the substitution of the Competitive Carrier rules for the more stringent Section 22.903 rules previously applicable to the BOCs. The Commission also noted that increased CMRS competition since the Commission's previous decisions not to impose separation requirements on ILEC CMRS may have increased the ILECs' incentives to discriminate against CMRS competitors seeking interconnection, especially given the potential for fixed wireless technology to become a serious competitive threat to the ILEC network.[7]

B. ITTA's Petition

ITTA argues that the Commission failed to justify the application of its modified separation rules to in-region CMRS provided by Two Percent LECs. It states that such rules are inappropriate for mid-size ILECs serving only "discrete areas within regions served by the largest LECs and [which] are much smaller than the footprint of most CMRS providers." ITTA Pet. at

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[5] R&O at ¶ 37.

[6] Id. at ¶ 55

[7] Id. at ¶¶ 48-54.

4. ITTA complains that the Commission's rationale for extending the separation requirements to ILECs -- that increased competition by CMRS providers increases incentives to discriminate -- "stands the pro-competitive policies of the 1996 Act on its head." Id. at 5. ITTA points out that, for example, the Southern New England Telephone Company (SNET) faces competition from AT&T, MCI and 20 other carriers in the local service market, and that this increased competition requires less, not more, regulation. Id. at 5-6.

ITTA also argues that differences in market power require different treatment for larger and mid-size LECs and that nothing in the record justifies the Commission's reversal of its previous decisions not to impose separation requirements on mid-size LECs. ITTA also argues that the need to file interconnection agreements with state regulatory agencies makes discrimination by mid-size LECs infeasible. It points out that CMRS competitors are often adjoining, and larger, LECs themselves with greater resources than mid-size LECs. Finally, ITTA claims that the opportunity to obtain a suspension or modification of the separation requirements does not relieve the unjustifiable burden of such requirements on mid-size LECs, especially given the absence of any anticompetitive conduct in the record. Id. at 7-9.

C. ITTA Has Not Demonstrated That Two Percent LECs Should be Exempt From LEC CMRS Separation Rules

ITTA's claim essentially boils down to its contention that mid-size ILECs lack the market power that justifies the imposition of separation requirements on larger ILECs. As the

Commission explained in the R&O, however, that is simply not the case. The geographical reach of an ILEC or the number of its subscribers is not the determinant of its market power; rather, it is the presence or absence of local exchange competition that determines whether a LEC of any size has market power.[8]

ITTA's response is that mid-size LECs are subject to local service competition and that the Commission has it backwards in imposing new regulation on account of increased competition. The fact is, however, that neither mid-size nor larger ILECs are subject to significant local competition. According to the Commission's recent telecommunications industry revenue report, the ILECs still account for 99.7% of all local exchange revenue.[9] ITTA's prime example, SNET, is a perfect illustration of the absence of meaningful local service competition to date. SNET's local service revenue and access revenue grew 4.2% and 10.6%, respectively, in 1997, driven by a 5.7% growth in access lines.[10] These results are not indicative of an ILEC under siege.

It should also be noted that SNET has resisted efforts by the Connecticut Department of Public Utility Control (DPUC) to bring about conditions necessary for the development of local competition. MCI has already recited in various proceedings the

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[8] R&O at ¶ 72.

[9] See "Telecommunications Industry Revenue: TRS Fund Worksheet Data" at Table 2, Industry Analysis Division, FCC (November 1997).

[10] "Corporate Release: SNET Reports Results, Part 1 of 3," at 2, First Call Corporation, dated Jan. 28, 1998.

barrage of anticompetitive assaults to which SNET has subjected it. For example, SNET has taken every step possible to thwart the balloting process established by the DPUC to allow consumers to choose their local service provider.[11] In fact, the resulting delay in local service balloting is a key factor in investment analysts' increased estimates for SNET's projected earnings for 1998.[12] In short, SNET has successfully held onto its local exchange monopoly in spite of federal and state regulatory efforts to open up the local service market to competition. SNET illustrates why there is no reason to exempt Two Percent LECs from regulatory restraints such as the separation requirements.[13]

Moreover, ITTA is confused about the nature of the competition that the Commission cited as justification for the

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[11] See Petition of MCI Telecommunications Corporation for Emergency Relief, DPUC Administration of the Local Exchange Company Election Process, et al., Docket Nos. 97-08-12, et al. (Conn. DPUC, Oct. 30, 1997). SNET has also abused its monopoly position by promoting a program to have its own interexchange service customers "freeze" their interexchange service selections in order to make it more difficult for competitors to submit orders to SNET carrying out customers' requests to switch to another presubscribed interexchange carrier. See letter from Donald J. Elardo, MCI, to John Muleta, Chief, Enforcement Division, FCC, dated July 24, 1996, Informal Complaint No. IC96-09734.

[12] See Merrill Lynch Global Securities Research, Southern New Eng Telecomm, Solid Quarter: Status of SBC Acquisition, at 3 (Jan. 28, 1998).

[13] In its Comments, MCI took the position that there was no need to extend the coverage of the previous separation rules in Section 22.903 to all ILECs. A more symmetrical application of a reduced level of regulation, however, presents a different policy question. Here, the Commission has more than adequately justified the application of the less stringent Competitive Carrier rules to all non-rural ILECs.

application of separation requirements to ILECs. The Commission's point was that increased competition from CMRS providers might well heighten ILECs' incentives to discriminate against such providers. That is a different type of competitive threat from that posed by wireline competitive local exchange carriers (CLECs). Obviously, if there were increased wireline local competition, that would decrease ILECs' abilities to discriminate, making the separation requirements less necessary. Increased CMRS competition, however, leaves the ILECs' local wireline bottleneck unimpaired. Thus, ILECs still have the ability to discriminate against CMRS providers and even more incentive to do so than previously, especially in the case of the fixed wireless services that threaten to displace the local wireline network but have not yet loosened the local bottleneck.

ITTA's final argument is that, given the nature of CMRS competition and the need to file interconnection agreements, it is not feasible for mid-size LECs to discriminate against other CMRS providers, which are often larger ILECs in adjoining service territories. The Commission already took account of the impact of such interconnection requirements, however, in deciding to reduce the degree of separation from that originally required in Section 22.903 of the Commission's Rules.[14] Moreover, all ILECs are subject to interconnection requirements, so there is nothing about those requirements that differentiates mid-size LECs from the larger LECs.

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[14] R&O at ¶ 62.

It is also worth noting in this connection that SNET has resisted MCI's efforts to negotiate a reasonable interconnection agreement, and MCI had to file a petition for compulsory arbitration of the unresolved issues before the Connecticut DPUC.[15] MCI was ultimately forced to file a complaint in federal district court seeking reformation of its interconnection agreement with SNET on the grounds that, inter alia, the rates for interconnection are not based on long-run forward looking costs, as required by Sections 251 and 252 of the Communications Act; the agreement imposes unjust, unreasonable and discriminatory conditions on interconnection with SNET's network in violation of Section 251(c) of the Act; and the agreement fails to impose performance standards and a noncompliance compensation mechanism as required by Section 251.[16] Based on MCI's experience in dealing with SNET on this issue, the Commission should not place great reliance on interconnection agreements with mid-size ILECs as a safeguard against anticompetitive conduct.

Finally, that some of the competitive CMRS providers might be affiliates of larger ILECs hardly diminishes the need to apply

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[15] Application of MCI Telecommunications Corporation for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. 96-09-09 (Conn. DPUC filed Sept. 13, 1996).

[16] See Amended Complaint of MCI Telecommunications Corporation and MCIMetro Access Transmission Services for Declaratory and Equitable Relief, MCI Telecommunications Corporation and MCIMetro Access Transmission Services, Inc. v. Southern New England Telephone Company, et al., Case No. 3:97CV1119(AWT) (D. Conn. filed Aug. 5, 1997).

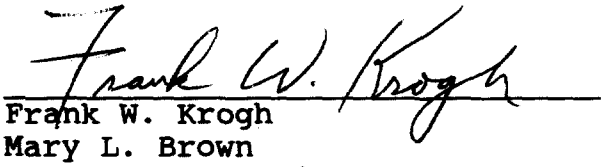
the separation requirements to mid-size ILECs. It is the non-ILEC CMRS providers that need protection from all ILECs, mid-size as well as larger ILECs. In any event, if a particular Two Percent LEC can show that it is disproportionately burdened by the separation requirements, it can petition the Commission for suspension or modification of those requirements as applied to it. ITTA has not explained why that safety valve is not sufficient to take care of those specific situations in which application of the requirements would be unusually burdensome or otherwise not justified.

Conclusion

Accordingly, ITTA's Petition for Reconsideration of the R&O should be denied. ITTA has not demonstrated any reason to exempt all Two Percent LECs from the separation requirements applicable to ILEC in-region broadband CMRS. Indeed, ITTA's prime example, SNET, is a perfect illustration of the continuing need for such safeguards.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By: 

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Dated: February 10, 1998

CERTIFICATE OF SERVICE

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